

When persons sell seeds to purchasers who will sow the seeds to raise prairie grasses that they will use and not resell, such vendors are engaged in the business of selling tangible personal property for use or consumption and are required to remit ROT on such sales. See 86 Ill. Adm. Code 130.2110. (This is a GIL).

October 19, 2000

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 22, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department, 2 Ill. Adm. Code 1200.120(b) and (c) (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>).

In your letter, you have stated and made inquiry as follows:

I am requesting a written ruling on whether we should be charging Illinois sales tax for seeds we sell to clients who are planting this seed on land enrolled in the Conservation Reserve Program (CRP) or other federal or state agricultural and conservation programs.

Two years ago I phoned the Illinois Dept. of Revenue and was provided the following explanation of regulations regarding my question. I do not know the name of the woman with whom I spoke. She told me that seed that is used for production is exempt from the sales tax. She also told me that seed that is sold to clients who are planting the seed on their CRP acres is also exempt. Seed that is planted on land that is not enrolled in any federal or state conservation program would be considered to be used for landscaping purposes and would be liable for taxation, according to this spokesperson.

I recently visited the Dept. of Revenue web site to research rulings that might confirm what I was told earlier over the phone. I was not able to find a ruling that exactly matched my question. Section 130.2110 Sellers of Seeds and Fertilizer of the Illinois Administrative Code addresses the basic question of tax liability for seeds being used either for consumption or for production for resale. One ruling, ST91-0104-02/15/91 FARM MACHINERY AND EQUIPMENT, stated, 'In order to qualify for exemption from the Retailers' Occupation Tax, farm machinery must be used primarily in production agriculture or in State or Federal agricultural programs.' Another ruling, ST 89-0319—05/04/1989 AGRICULTURAL PRODUCERS AND PRODUCTS, stated, 'when farmers purchase tree seedlings for the purpose of planting to comply with a Federally subsidized soil conservation program, such purchases are subject to sales tax.'

The two rulings cited appear to be contradictory. The one ruling on tree seedlings more closely matches the category of seeds that we produce, but this ruling contradicts what I was told verbally by one of your staff people.

We grow seed of native prairie wildflowers and grasses. This seed is purchased by our clients to provide beauty, to reconstruct prairie landscapes, to provide wildlife habitat, and to reduce soil erosion. The federal CRP program, by providing bonus point incentives in the bidding process that determines eligibility, encourages the planting of native species. Growers do receive some cost share for the expense of planting land enrolled in CRP. They also receive a yearly payment for their contracts. These growers are producing a landscape, not for human or animal consumption or for resale, but for the tangible benefits that all of us receive in ecological services, e.g. cleaner water and biodiversity. The federal or state taxpayer is purchasing these ecological services from the grower. The grower looks at these plantings as an alternative 'crop' from which he receives taxpayer support in the form of annual cash payments. The taxpayer is paying the grower for the ecological services he receives from this transaction. In this sense, would this not fit into the category of 'production agriculture' making the sale of seed used in this production exempt from sales tax?

Thank you for the opportunity to present this question for your consideration.

We have enclosed 86 Ill. Adm. Code 130.305, the regulation covering the Illinois sales/use tax exemption afforded machinery and equipment used primarily in production agriculture. Notwithstanding the fact that sales may be at retail, the Illinois Retailers Occupation Tax (i.e. sales tax) does not apply to sales of machinery and equipment used primarily in production agriculture or in State or Federal agricultural programs.

No item qualifies for the exemption in and of itself and no transaction is exempt unless the seller obtains a certification that contains the information required by Section 130.305(m). Machinery or equipment that is used both in qualifying and non-qualifying activities must be used primarily in a qualifying activity in order for the exemption to apply.

Generally, seed sold for use in State or Federal agricultural programs, such as for cover or landscape purposes, does not qualify for this exemption as it is neither "machinery" nor "equipment" as defined by the regulation.

Machinery means major mechanical machines or major components thereof contributing to the production agriculture process or used primarily in State or Federal agricultural programs. Equipment means any independent device or apparatus separate from any machinery, but essential to production agriculture. Please refer to 86 Ill. Adm. Code 130.305(l) and (k).

When persons sell seeds to purchasers who use the seeds in raising crops that they will resell, the sale of seeds is not taxable as a sale for resale. However, when persons sell seeds to purchasers who use the seeds in raising grass, crops, or other plants that they use and not resell,

such vendors are engaged in the business of making retail sales of the seeds and are required to remit Retailers' Occupation Tax (sales tax) to the Department on their gross receipts from such sales. See 86 Ill. Adm. Code 130.2110, enclosed. Applying the principles set forth in Section 130.2110, the utilization of seed for the purpose described in your letter is a "use" of the seed and sales of seed for this purpose are sales at retail subject to Retailers' Occupation Tax liability.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

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